

SOUTH AFRICA / JUDGMENT

Bangiwe v Road Accident Fund (21327/17) [2019] ZAGPPHC 437; 2021 (3) SA 172 (GP) (30 August 2019) [2019] ZAGPPHC 437

COURT

North Gauteng High Court, Pretoria

BEFORE

Kumalo

CASE / FILE NUMBER

21327/17

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IN THE HIGH COURT OF SOUTH
AFRICA
GAUTENG DIVISION. PRETORIA
(1)

REPORTABLE:

YES
(2)
OF
INTEREST TO OTHER JUDGES: YES
(3)
REVISED
Case
number: 21327/17
30/8/2019
In

the matter between:

BANGIWE
HP
Plaintiff
And
THE
ROAD ACCIDENT FUND
Defendant

JUDGEMENT

KUMALO, AJ

INTRODUCTION

1. This is a Road Accident Fund claim arising from a somewhat unique set of facts which are common cause between the parties.
2. The parties agreed at a pre-trial meeting held on 13 August 2019 that the trial should proceed on the issue of merits alone and that the quantum should be separated and postponed in terms of the practice directive of this Court.
3. The parties further agreed to proceed on an issue of law and that if this Court finds for the defendant, then the claim of the plaintiff should be dismissed with costs and if the Court finds for the Plaintiff, then the defendant concedes liability 100%.

FACTS OF THE CASE

4. The Plaintiff was a passenger on the back of a bakkie, being the insured vehicle, there and then driven by one, Mr. Madise, being the insured driver. The plaintiff fell from the back of the bakkie when the insured driver lost control of the vehicle due to negligent driving. The plaintiff sustained injuries due to this collision that occurred underground in the mine.
5. A claim for injury on duty was lodged with the Workman's Compensation Commission and will be addressed more appropriately during the quantum stage of the action should this court find for the plaintiff on the question of law posed.
6. The Defendant has come up with a somewhat novel defence and argues that since the collision and/or accident occurred underground in amine, it falls outside the ambit of section 17 of the Road Accident Fund Act, Act No. 56 of 1996 as amended.
7. The crisp question that the parties posed for the consideration of this Court is whether the Road Accident Fund is liable under section 17 of Act 56 of 1996 when the collision and/or accident happened underground a mine, when all the other criteria for liability are met.

THE APPLICABLE SECTION OF THE RELEVANT LEGISLATION

8. It is perhaps apt that I should quote the relevant parts of section 17 of the Act:

"Liability of Fund and agents

17(1) The Fund or agent shall-

- (a) Subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of owner or the driver thereof has been established;

(b) ...

Be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic,(my emphasis) if the injury or death is due to the negligence or other wrongful act of the driver or the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee ... "

9. The contentious issue between the parties in this matter is the part of the section underlined in bold above.
10. Neither defendant nor plaintiff could direct this court to any relevant case law authorities to support their opposing views in the matter though both in argument relied on more or less the same authorities to persuade this court notably the decisions in *Chauke v Santam* 1997 (10 SA 178 (AD)), *RAF v Vogel* 2004 [ZASCA] case 113/03, *RAF v Mbendera & Others* 2004 [ZASCA] case 209/03 and *Mutual & Federal v Day* 2001 (3) SA 775 (SCA).
11. However the above cases dealt with the issue of whether the vehicles in question were motor vehicles as defined in the Act.
12. In this case, Defendant contends that section 17 of the Act does not cover underground accidents and that the interpretation thereof
should not be extended to include motor vehicle accidents that happen underground a mine even where all other elements of the Act are met.
13. Counsel for the Defendant argues that the liability in respect of section 17 should flow from an interpretation that promotes its ordinary understanding (meaning), purpose and spirit. To this end, I am ad idem with counsel for defendant.
14. The phrase that requires interpretation is "at any place within the Republic..."
15. In an effort to convince this court how it should interpret the above phrase, counsel for the defence submitted that it can be accepted that the two main approaches to the interpretation are the literal interpretation which he termed text based and the purposive which he termed text-in-context approach either of the two can produce a justifiable and justiciable result.
16. In *Principles of Legal Interpretation Statutes, Contracts & Wills*, EA Kellaway[1] states that what is apparent from the various aspects of the development of statutory interpretation is that over the years the

approach of courts determining the meaning of a provision in an enactment has been to let themselves be guided either by "the

literal meaning" of the language used by the law-giver, or by "the intention" or the "purpose" of the

enactment, or, in some cases, by a combination of both these determining factors.[2]

17. Further the learned author advanced the argument that interpretation is a process of evaluation, and if in the process one factor is relied on where there are others, it puts the evaluation in a very poor light. He states further that there is no comprehensive guiding principle in respect of an approach to statutory interpretation.[3]
18. In *Administrator (Cape) v Raats Rontgen and Vermuelen (Pty) Ltd*[4], the court, considering whether the state was bound by its own legislation within the provisions of the statute in question, weighed

each of these factors, namely the "literal meaning", the "intention" and the "purpose". In fixing the "intention" of the legislature the court referred to the "surrounding circumstances" that motivated the Act and the mischief envisaged and its consequences.

19. The approach in my view to any kind of legal interpretation should include a careful appraisal of each of the determining factors or guides, particularly those that have been used to produce statutory meaning. Thus additional factors such as the circumstances

surrounding the passing of the enactment and the object and/or mischief aimed at may very well contribute to the determination of what the legislature really intended.

20. It is my view that to understand the meaning of words in a statute, courts have to understand the statute's intent. The purpose of an Act, i.e. why it was enacted and how it came to be, is not a just relevant factor in deciding how to give effect to a statute's words, but is essential to determining its meaning. I further believe that Courts have echoed the mantra that the modern approach to statutory interpretation involves a "textual, contextual and purposive analysis of the statute or [the] provision in question."
21. Having regard to the above, I would give emphasis the centrality of a statute's purpose in determining the meaning of specific provisions

and or in an Act.

22. In the present matter, counsel for defence argues that the words "at any place" should not and cannot be interpreted to mean "anywhere" and further suggests that such literal interpretation would lead to an unfair and absurd result.
23. To this end, counsel sort to persuade this Court to take into consideration the title of the Act we dealing with namely the "Road

Accident Fund Act" and argues that it is very self-explanatory and does not create any ambiguity or vagueness in relation to its application and sort to rely on the case law and academic literature dealing with the definition of the term "road".

24. In *Chauke v Santam Limited*, Olivier JA dealing with the concept of a "road" seems to accept the definition given in the Concise Oxford Dictionary 7th Ed namely the meaning of that word, i.e. "a line of communication, especially a specially prepared track between places for use by pedestrians, riders and vehicles."
25. Counsel for the defence submits in relation to movement of vehicles underground, that such vehicles move in tunnels and not on roads and submits that the legislators could neither have foreseen nor intended for accidents that occur in "tunnels" to be covered by the Act.
26. With the greatest of respect, counsel's argument is without merit as it suggests that there are no roads in tunnels.
27. I am aware at least of no less than six tunnels in the Republic of South Africa and to name but a few;
 - 27.1 the N1 Huguenot Tunnel, Western Cape;
 - 27.2 the N1 Watervalboven Tunnel, Mpumalanga;
 - 27.3 the N1 Hendrik Verwoerd Tunnels, Limpopo;
 - 27.4 R36, JG Strydom Tunnel, Mpumalanga;
 - 27.5 R55 Daspoort Tunnel, Gauteng;
 - 27.6 R62, Cogmanskloof Tunnel, Western Cape;
 - 27.7 R101, du Touitskloof tunnel, Western Cape;
 - 27.8 R104, Hartebeespoort Tunnel, North West; and
 - 27.9 Cape Town M6, Chapman's Peak Drive.
28. The above are in the national road network of the Republic of South Africa and clearly it cannot be heard that claimants of motor vehicle accidents that occur on these tunnels would be excluded by the mere virtue of the fact that they so happened in a tunnel.
29. Counsel for the defendant however sought to distinguish the above and argued that it could not have been the intention of the legislature to cover motor vehicle accidents underground in a mine. This argument is artificial and bears nothing to the reality of the situation and further such interpretation would lead to the very absurdity he himself alludes to
30. The purpose or object of the Road Accident Fund Act is stated in clear and unambiguous terms in section 3 thereof. It provides as follows:

"Object of Fund

3. The object of the fund shall be the payment of compensation in accordance with this Act for loss or damage wrongfully caused by the driving of motor vehicles."

31. Section 17 prescribes the circumstances under which the Fund would be liable and/or obliged to compensate and in my view, there are three elements that need be present for such, namely (i) the claim must arise from the negligent or other wrongful driving of a motor vehicle by any person, (ii) in any place within the Republic and (iii) injury and or death occurs as a result thereof.
32. A proper reading of the Act does not require that a motor vehicle should have been driven on a "road" at the time of the

accident and such a requirement would certainly create an anomaly that would exclude those that would be injured in motor vehicle

accidents that happen for example in construction sites, mealie fields and other places that may not be your "traditional roads" so to speak.

34. Defendant's suggestion would further create an anomaly that persons injured out of negligent driving of motor vehicles underground mines would be excluded when those injured on motor vehicle accidents on opencast mines would be covered.
35. In the circumstances, it is my view that the use of the words "any place within the Republic" was deliberate and meant just that.
36. A dictionary definition of the word "anyplace" or "any place" is simply that "anywhere".[5]
37. This Court is further cognisant of the fact that the RAF Act is a "social legislation aimed at the widest possible protection and compensation against Joss and damages for the negligent driving of a motor vehicle[6] To a large extent, it represents ... an embodiment of the common law actions relating to damages for bodily injury and loss of support caused by or arising from the negligent driving of a motor vehicle.[7]
38. It would therefore be artificial of this Court to seek to limit the liability of the Defendant simply on the basis that the accident

happened underground in a mine when the Act states in no uncertain terms that accident must have happened at "any place within the Republic".

39. Had the legislature intended to so limit the RAF's liability, it could have so stated and or used a language that would have been clear to exclude such accidents.
40. In the light of the above reasons, I am of the view that in this case, even though the collision occurred underground, such collision

occurred within the Republic and as such barring anything else, the Defendant is liable for the injuries of the Plaintiff.

41. In the result, the following order is made

41.1 Defendant is liable for the plaintiff's agreed or proven damages; and

41.2 Defendant is ordered pay the costs.

KUMALO

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

DATE HEARD

: 15 AUGUST 2019

DATE DELIVERED

: 30 AUGUST 2019

FOR THE APPLICANT : ADV A A LUBBE

INSTRUCTED BY

: Nel Van Der Merwe & Smalman Inc

FOR THE DEFENDANT : ADV. H NKABINDE

INSTRUCTED BY

: Lekhu Pilson Attorneys

[1] Kellaway Principles of Legal Interpretation Statutes, Contracts & Wills at 187.

[2] See e.g. Union Government v. Tonkin 1918 AD 533 at 540-541; south African Railways and Harbours v Smith's Coasters (Pty) Ltd 1931 AD 113 at 127-129; Evans v Schoeman 1949 (1) SA 571 (A) 576-578

[3] Kellaway at 187

[4] 1992 91) SA 245 (A)

[5] Concise Oxford English Dictionary 12th Edition

[6] RAF v M obo M [2005] 3 all SA 340 at 344; SA Eagle Insurance Co. Ltd v Pretorius [1997] ZASCA 107; 1998 (2) SA 656 (SCA) 659 1-660D

[7] Evins v Shield Insurance Co. Ltd 1980 (2) SA 814 (A) 841E.

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